

REMARKSAmendments to the Claims

The amendments to the claims add no new matter. Previously withdrawn claim 11 has merely been canceled.

Regarding Priority

DE 10243592.8 was filed on September 19, 2002. Thus, under normal circumstances, a US application filed on Friday, September 19, 2003 would have been entitled to claim priority to DE 10243592.8. The present application was filed on Monday, September 22, 2003. However, this was because the United States Patent and Trademark Office was closed on Friday, September 19, 2003, presumably because of Hurricane Isabel,¹ and that date was treated as a "Federal holiday within the District of Columbia" under 35 U.S.C. § 21 and 37 C.F.R. §§ 1.6, 1.7, 1.9, 2.2(d), 2.195, and 2.196. See page 2, 6th bullet point of the enclosure indicating the Operating status of the USPTO (available at: www.uspto.gov/emergencyalerts/index_emergency.html).

According to 35 U.S.C. §119(a), "[a]n application for patent for an invention filed in this country by any person who has ... previously regularly filed an application for a patent for the same invention ... in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed...." However, 35 U.S.C. 21(b) states that "[w]hen the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or fee paid, on the next succeeding secular or business day." Thus, the claim to priority was timely and proper.

Regarding the Oath/Declaration

In light of the above, the examiner's position that the declaration submitted with

¹ A storm that left more than 4.3 million residents along the East Coast of the United States without power.

the application was defective because of the priority claim to DE 10243592.8, is erroneous. A new Oath/Declaration is not required.

It is respectfully submitted that the present application is in condition for allowance. Favorable action is solicited.